IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,
APPELLANT,
vs.
WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS AND WILLIAM S. MCKINNON,
APPELLEES.
No. 360.

AND

WILLIS G. BOWLAND, L. EWING JONES, ARTHUR I. VORYS AND WILLIAM S. MCKINNON,
APPELLANTS,
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,
APPELLEE.
No. 361.

MOTION TO ADVANCE.

Willis G. Bowland, Treasurer, and L. Ewing Jones, Auditor of Franklin county, Ohio, and Arthur I. Vorys,

Superintendent of Insurance, and William S. McKinnon, Treasurer of the State of Ohio, appellees in cause No. 360, and appellants in cause No. 361, respectfully move the court to advance the above entitled causes on the docket for early hearing.

The Scottish Union and National Insurance Company, a resident of Great Britain, in order to comply with the laws of Ohio regulating the admission of foreign insurance companies to do business within that state, maintained on deposit with the Superintendent of Insurance and Treasurer of the State of Ohio, in Franklin county, $100,000 of municipal bonds during the years 1895 to 1903, inclusive.

Upon the failure of the owners and custodians of said bonds to return the same for taxation, the Auditor of Franklin county listed said $100,000 of municipal bonds for taxation in said county for each of said years 1895 to 1903, inclusive. Said municipal bonds were removed from the State of Ohio on the second day of April, 1903, and bonds of the United States, belonging to said The Scottish Union and National Insurance Company, were substituted therefor, and are now on deposit with Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio.

The question involved in case No. 360 is the validity of Section 1095 of the Revised Statutes of Ohio, which authorizes a county treasurer, when taxes are past due and unpaid, to distrain sufficient goods and chattels, if found within his county, belonging to the person charged with such taxes, and to sell the same to pay the taxes so

remaining due; and further the right of Vorys, as Superintendent of Insurance, and McKinnon, as Treasurer of the State of Ohio, to permit the Treasurer in this case to distrain said bonds of the United States so deposited with them by the Scottish Union and National Insurance Company; the claim of appellant being that in so far as said statute attempts to confer upon the treasurer the right to subject to the payment of taxes by distraint, any other personal property within the State of Ohio, belonging to a non-resident of that state, than the particular property on account of which the taxes were originally charged, it violates the Fourteenth Amendment of the Constitution of the United States.

The question involved in case No. 361 is the validity of Section 2859 of the Revised Statutes of Ohio, which authorizes a county treasurer to enforce the collection of any personal taxes which stand charged against any person, as due and unpaid, by civil action against the person for the recovery of such unpaid taxes. The operation of this statute upon non-residents of the state was successfully challenged by the appellee in the court below under the provisions of the Fourteenth Amendment of the Constitution of the United States.

In the Circuit Court the bill of complaint prayed for an injunction, restraining Bowland, as Treasurer, from attempting to collect the taxes assessed against complainant, either by a civil action, under Section 2859, or by distraint under Section 1095 of the Revised Statutes of Ohio, of the bonds of the United States deposited with the Superintendent of Insurance and Treasurer of State, or

any other personal property of complainant, which might be found in Franklin county, and restraining Arthur I. Vorys as Superintendent of Insurance, and William S. McKinnon as Treasurer of the State of Ohio, from delivering the bonds of the United States so deposited with them to said Bowland as Treasurer. Fourteen other insurance companies under a similar state of facts filed bills seeking the same relief, and there are now pending in the Circuit Court sixteen cases in which the Treasurer of Franklin county is temporarily enjoined from proceeding to collect taxes amounting to $180,000, now claimed by said treasurer as due and unpaid. The present case is a test case, which will be decisive of the issues in the remaining sixteen cases.

Upon the hearing of the case at bar, the Circuit Court refused to enjoin the Treasurer from proceeding to distrain said bonds of the United States, or the Superintendent of Insurance and Treasurer of State from delivering said bonds to said Treasurer. The appeal from this decision by the Scottish Union and National Insurance Company is docketed in this court as No. 360. The court perpetually enjoined the Treasurer from proceeding under Section 2859 to collect said taxes by civil action; and from attempting to collect either by distraint or otherwise the taxes levied for the year 1903. The cross appeal on behalf of Willis G. Bowland, L. Ewing Jones, Arthur I. Vorys and William S. McKinnon from this decision is docketed in this court No. 361.

The right of the state to tax said bonds was settled by the decision of the Circuit Court of Appeals in the case

of the Western Assurance Company v. Halliday, 126 Fed. Rep., 257; a petition for a writ of *certiorari* was denied by this court in the same case, March 21, 1904, 193 U. S., p. 673. The right of the state to collect said taxes now before this court in the present cases, is a subsequent step in the same litigation involved in the case of The Western Assurance Company v. Halliday, above noted, and The Western Assurance Company involved in that cause is one of the companies whose bill of complaint is now pending in the Circuit Court awaiting the decision of this cause.

The two statutes to which objection is made under the Fourteenth Amendment of the Constitution of the United States, are the legislative enactments by virtue of which taxes levied upon personal property in the State of Ohio are collected. If the laws enacted within the State of Ohio for enforcing the collection of taxes, legally levied, in their operation upon non-residents, are repugnant to the Federal Constitution, no taxes upon the personal property of such non-residents of the state will ever be paid, and a large portion of the revenues of the state derived from the taxation of personal property will be destroyed. It is important that the power of the several states to levy and collect taxes by summary proceedings be delayed as little as possible by process from courts of federal jurisdiction. In view of the fact that this is a test case, that the questions involved are of general interest, affecting the collection of the public revenues of the State of Ohio, we submit that the case is

one which should be advanced upon the docket and be heard at an early day.

Notice of this motion has been served upon counsel for The Scottish Union and National Insurance Company.

Respectfully submitted,

WADE H. ELLIS,

Attorney General of the State of Ohio, and Counsel for Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio.

EDWARD L. TAYLOR, JR.,
AUGUSTUS T. SEYMOUR AND
KARL T. WEBBER,

Counsel for Willis G. Bowland, as Treasurer, and I. Ewing Jones, as Auditor of Franklin County, Ohio.